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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* BERNARD A. TRAVERSAT, GREGORY L. SLAUGHTER,  
THOMAS E. SAULPAUGH, MOHAMED M. ABDELAZIZ,  
MICHAEL J. DUIGOU, ERIC POUYOUL,  
JEAN-CHRISTOPHE HUGLY, LI GONG, WILLIAM J. YEAGER,  
WILLIAM N. JOY, and MICHAEL J. CLARY

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Appeal 2009-007247  
Application 10/055,645  
Technology Center 2400

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Before CARLA M. KRIVAK, THOMAS S. HAHN, and  
ELENI MANTIS MERCADER, *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1-40.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

## STATEMENT OF THE CASE

Appellants' claimed invention relates to a peer-to-peer platform that includes a peer discovery protocol and a peer membership protocol (Spec. 23:25-24:3; 24:16-23).

Independent claim 1, reproduced below, is representative of the subject matter on appeal:

1. A peer computing system comprising:

a plurality of peer nodes;

wherein at least a subset of the peer nodes are configured to participate in a peer discovery protocol to discover other peer nodes; and

wherein at least a subset of the peer nodes are configured to participate in a peer membership protocol for joining or forming a peer group with other peer nodes.

## REFERENCES

Badovinatz	US 5,896,503	Apr. 20, 1999
Teodosiu	US 60/252,658	Nov. 22, 2000
Teodosiu	US 2002/0062375 A1	May 23, 2002

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<sup>2</sup> The Examiner noted that claims 7, 19, 20, and 22 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112, including any intervening claims (Ans. 9). It is noted that there is no outstanding rejection under 35 U.S.C. § 112. Thus, we consider the reference to a § 112 rejection to be a typographical error, and only review these claims under the outstanding obviousness double patenting rejection before us.

Traversat                      US 7,065,579 B2                      June 20, 2006  
The Examiner provisionally rejected claims 1-40 under the judicially created doctrine of obviousness-type double patenting over claims 1-61 of Traversat.<sup>3</sup>

The Examiner rejected claims 1-6, 8-18, 21, and 23-40 under 35 U.S.C. § 103(a) based upon the teachings of the Teodosiu Patent Application Publication 2002/0062375 (“Teodosiu 2002/0062375”) and Badovinatz.

Appellants contend the Examiner did not state a prima facie obviousness-type double patenting rejection based on Traversat (App. Br. 12). Appellants further contend Teodosiu 2002/0062375 does not qualify as prior art (App. Br. 13). Even if Teodosiu 2002/0062375 is prior art, Appellants contend the combination of Teodosiu 2002/0062375 and Badovinatz does not teach or suggest all the limitations of the claimed invention (App. Br. 16).

## ISSUES

1. Did the Examiner err in rejecting claims 1-40 under the judicially created doctrine of obviousness-type double patenting over claims 1-61 of Traversat?
2. Did the Examiner err in finding Teodosiu 2002/0062375 qualifies as prior art?
3. Did the Examiner err in finding claims 1-6, 8-18, 21, and 23-40 obvious based upon the teachings of Teodosiu 2002/0062375 and Badovinatz?

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<sup>3</sup> The obviousness-type double patenting rejection is no longer provisional since Traversat issued as US 7,065,579 B2 on June 20, 2006.

## FINDINGS OF FACT

1. Teodosiu 2002/0062375 teaches a system for locating and tracking resources in a peer-to-peer computer network (§ [0029]). The peer-to-peer computer network, called a “realm,” includes a number of peers 140, which make available peer resources, and Resource Naming Service (RNS) servers 130 (§ [0030]).

2. Teodosiu 2002/0062375 teaches each RNS server tracks the current network location (IP addresses and IP port numbers) and status (on- or off-line) of all peers assigned to it as well as the locations and availability of resources among its assigned peers (§ [0035]).

3. In Teodosiu 2002/0062375 peers locate peer resources through a two-step process. First, a peer seeking a particular resource communicates with its assigned home RNS server, which in turn determines one or more locations in the realm where the resource is available. Second, the peer accesses the resource at the provided location. (§ [0037]). The resource can be a resource published by another peer, (§ [0073]), in which case the step of accessing the resource involves a peer-to-peer request (§ [0077]).

4. Teodosiu Provisional Application 60/252,658 (“Teodosiu 60/252,658”) discloses a peer-to-peer locator and tracking service that comprises a number of user machines (“peers”) and one or more RNS servers (Page 3).

5. Teodosiu 60/252,658 discloses each RNS server stores the online status and current IP addresses and port numbers of the peer machines homed to that RNS server for use in pointing peers to other peers’ locations (Page 5).

6. In Teodosiu 60/252,658 a user request for a peer resource is communicated to the home RNS server. If the RNS server locates the resource, it returns information including a list of locations (IP addresses and ports) that can provide the resource. The requesting peer selects one or more locations from the list and directly connects to the location to effect transfer of the resource. (Page 6) The location information provided by the RNS server is the location of a publishing peer (page 7).

7. Badovinatz teaches a distributed computer system comprising a plurality of computer nodes 106 and a control workstation 112 joined by a local area network (LAN) 102. The control workstation sends messages and data to the computer nodes and the computer nodes send messages and data to each other. (Col. 2, ll. 30-62)

8. Badovinatz also teaches computer nodes may be members of one or more groups within a domain. For example, nodes in domain 201(d) are members of a single group served by a group leader 215. A name server 202(d) in the domain directs each node that wants to join the group in the domain to the group leader. The group leader insures group names are unique within the domain. (Col. 3, ll. 10-42)

## ANALYSIS

### *Obviousness-type Double Patenting*

Appellants contend the Examiner did not provide any reasons or evidence showing differences between the claimed invention and Traversat's claims would be obvious variations (App. Br. 12; Reply Br. 2).

The Examiner relies on an anticipation rationale in finding Traversat's claim 18 meets all the limitations of claim 1 of the present invention (Ans.

10-11). The Examiner's side by side comparison, bolding the relevant portion, makes it clear what portion of Traversat's claim 18 is relied upon. We agree with the Examiner (Ans. 10-11) that the broader scope of claim 1 is anticipated by the Traversat's narrower claim 18. *See* MPEP 804.II.B.1. Therefore, the obviousness-type double patenting rejection of claim 1 is affirmed.

With respect to claims 2-40, as Appellants assert, the Examiner has not specifically addressed how Appellants' claims compare to Traversat's claims (App. Br. 13; Reply Br. 3). Thus, the obviousness-type double patenting rejection of claims 2-40 is reversed as the Examiner did not meet the burden of articulating how the claims compare.

*Rejection under 35 U.S.C. § 103(a)*

*Teodosiu as Prior Art*

Appellants contend Teodosiu 2002/0062375 is not prior art for two reasons. First, Appellants argue not every portion of Teodosiu 2002/0062375 the Examiner relies on is found in either Teodosiu 60/252,658 or Teodosiu 60/252,685 ("Teodosiu's provisional applications") (App. Br. 13-14). Specifically, Appellants assert paragraphs [0016], [0030]-[0037], [0045], [0053], [0073], [0074], [0077], and [0094-0097] are not found in Teodosiu's provisional applications (App. Br. 14). However, as the Examiner correctly asserts, pages 3-8 of Teodosiu 60/252,658 disclose the subject matter the Examiner relies on in Teodosiu 2002/0062375 for the 35 U.S.C. 103(a) rejection discussed below (Ans. 11-20; FF 1-3, 4-6).

Second, Appellants argue Teodosiu 2002/0062375 is not entitled to the priority date of either of Teodosiu's provisional applications because none of the claims in Teodosiu 2002/0062375 are supported under 35 U.S.C.

§ 112 by either of the provisional applications (App. Br. 14-15). For example, Appellants assert claim 1 of Teodosiu 2002/0062375 is not supported by pages 3-4 of Teodosiu 60/252,658 (App. Br. 15). However, page 6 of Teodosiu 60/252,658 does support claim 1 of Teodosiu 2002/0062375 (Ans. 18). Specifically, Teodosiu 60/252,658 provides support for “receiving a peer resource request . . . ,” “generating a peer resource response . . . ,” and “returning the peer resource response . . . ,” as recited in claim 1 of Teodosiu 2002/0062375. Therefore, contrary to Appellants’ assertions, Teodosiu 2002/0062375 qualifies as prior art with respect to Appellants claimed invention.

*Claims 1, 2, 10, and 18*

Appellants contend Teodosiu 2002/0062375 does not teach or suggest peer nodes configured to participate with other peer nodes in a peer discovery protocol because Teodosiu 2002/0062375 relies on peers communicating with a central server (App. Br. 17). Appellants assert Teodosiu 2002/0062375 does not describe the “peers participating with other peers in a peer discovery protocol” (App. Br. 17-18).

As the Examiner finds, Teodosiu 2002/0062375 teaches peers registering to participate in a peer-to-peer realm, and each peer communicating with its home Resource Naming Service (RNS) server to discover peer resources (Ans. 20; FF 1-3). This teaching meets claim 1’s limitation of “wherein at least a subset of the peer nodes are configured to participate in a peer discovery protocol to discover other peer nodes.” Additionally, the language “participating with other peers” is not recited in claim 1. Claim 1 merely recites peer nodes “participate in a peer discovery protocol,” and does not require the discovery protocol include direct



communication between peers. Thus, Teodosiu's 2002/0062375 teaching of each peer communicating with its RNS server to discover peer resources meets the limitation of peer nodes that "participate in a peer discovery protocol," as claimed.

Appellants contend Badovinatz describes managing membership of a domain of processors in a distributed computing environment, and does not teach a peer membership protocol for joining or forming a peer group (App. Br. 18-19). Appellants also argue Badovinatz teaches away from a peer-to-peer system because peer computing systems seek to avoid a central server node and the Examiner has not shown how peer computing is inherent in Badovinatz (App. Br. 19-20).

As the Examiner finds, Badovinatz does disclose providing a membership protocol for adding nodes as members of a domain that supports peer-to-peer computing, meeting claim 1's limitation of a membership protocol for joining a peer group (Ans. 20-21; FF 7, 8). Badovinatz also discloses a network of computer nodes that can communicate with each other, in addition to communicating with a control workstation (Ans. 21; FF 7). Thus, Badovinatz's system does disclose peer-to-peer computing.

Finally, Appellants contend there is no reason to modify Teodosiu 2002/0062375 with Badovinatz's teachings (App. Br. 19). Appellants assert because Badovinatz teaches managing membership of a domain of *processors* (i.e., not *computers*) and teaches away from peer computing, the Examiner's proposed system for "'manag[ing] membership of a domain of computers of a distributed computing environment'" would not result from the combination of Teodosiu 2002/0062375 and Badovinatz (App. Br. 19).

Teodosiu 2002/0062375 and Badovinat兹 disclose combinable systems. Badovinat兹 teaches “Each node 106 is a computer itself” (Badovinat兹 col. 2, ll. 39). The fact that Badovinat兹’s computer nodes are also referred to as *processors* does not disqualify them from being interchangeable with Teodosiu’s 2002/0062375 peer computers. Moreover, as previously noted, Badovinat兹 teaches a distributed computing environment wherein the computer nodes may communicate with each other, as in a peer computing system (FF 7). Further, as the Examiner states, one would want to combine Badovinat兹’s membership protocol with the peer-to-peer computing realm of Teodosiu 2002/0062375 because of Badovinat兹’s desire to manage membership of a domain of processors (i.e., computer nodes) in a distributed computing environment (Ans. 21; Badovinat兹 col. 1, ll. 5-8). In addition, Badovinat兹 provides reasons why one would want to manage a domain of computers, namely, “to add new nodes to a domain, to remove nodes from a domain when they fail, and to recover a domain when its name server node fails” (Badovinat兹 col. 3, ll. 43-46).

Therefore, claim 1 and claims 2, 10, and 18, which have not been separately argued, are obvious over the combination of Teodosiu 2002/0062375 and Badovinat兹.

*Claims 3, 4, and 12*

With respect to claim 3, Appellants contend Teodosiu 2002/0062375 does not teach or suggest a common set of services provided by peer nodes in a peer group (App. Br. 22). As noted above, the combination of Teodosiu 2002/0062375 and Badovinat兹 teaches peer nodes in a peer group. Further, as the Examiner finds and we agree, Teodosiu 2002/0062375 teaches

multiple peer nodes may make available the same resources in the peer-to-peer realm (Ans. 21). Teodosiu 2002/0062375 discloses the available resources can be services, such as “Web services, Microsoft .NET services, application instances” (§ [0122]). Therefore, the rejection of claim 3 is affirmed. Claim 4 was not separately argued, and independent claim 12 recites limitations similar to those in claims 1 and 3. Thus the rejection of claims 4 and 12 is also affirmed.

*Claims 5 and 13*

The Examiner agrees with Appellants’ claim 5 argument with respect to the prior art’s failure to teach “a membership service configured for use by member peer nodes in said peer group to reject or accept group membership applications” (Ans. 21-22). The Examiner thus finds claim 5 allowable.<sup>4</sup> Claim 13 recites limitations similar to claim 5. Therefore, the rejection of claims 5 and 13 is reversed.

*Claims 6, 14, and 21*

The Examiner finds Teodosiu 2002/0062375 teaches a gate server resolves resource addresses for peers (Ans. 22). However, as Appellants argue and we agree, Teodosiu 2002/0062375 does not disclose a peer resolver protocol for search queries “from one peer group member to another peer group member,” as recited in claim 6 (App. Br. 25). Therefore, the rejection of claim 6 and claims 14 and 21, which include similar limitations, is reversed.

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<sup>4</sup> The Examiner objects to claim 5 as dependent on a rejected base claim, but indicates it would be allowable if rewritten in independent form, including all the limitations of the base claim and intervening claims (Ans. 22).

*Claims 8, 16, and 23*

Appellants contend Teodosiu 2002/0062375 does not teach or suggest peers needing to know peer routing information to locate resources, and the RNS server enabling peers to request peer routing information to reach other peer nodes (App. Br. 26). However, as the Examiner finds and we agree, Teodosiu 2002/0062375 teaches the RNS server maintains network locations of peers, including IP addresses (i.e., routing information), and provides this location information to peers requesting access to resources available at other peers (Ans. 22; FF 2-3). Therefore, the rejection of claim 8 and claims 16, and 23, which provide similar limitations, is affirmed.

*Claims 9, 17, and 24*

Appellants contend Teodosiu 2002/0062375 does not teach or suggest peer nodes participating in a peer information protocol for enabling the peer nodes to learn about other peer nodes' capabilities and status (App. Br. 28).

However, as the Examiner finds and we agree, Teodosiu 2002/0062375 teaches peers can identify the status of peer resources and can publish peer resources by placing the resources in a publication directory (Ans. 23). A requesting peer learns which peers are both online (i.e., status) and have published the requested resource (i.e., capabilities) when, as explained above, the RNS server returns locations where the requested resource is available (FF 2-3). Therefore, the rejection of claim 9 and claims 17 and 24, which provide similar limitations, is affirmed.

*Claims 11, 25, 27, and 28*

Appellants contend Teodosiu 2002/0062375 does not teach or suggest peer nodes publishing advertisements for resources (App. Br. 29).

Appellants further contend Teodosiu 2002/0062375 does not teach or

suggest the resources include peer nodes, peer groups, pipes, and pipe endpoints (App. Br. 29).

Teodosiu 2002/0062375 teaches peers publish (i.e., advertise) resources by placing the resources in a publication directory (*See* Ans. 23). Further, as described above, in response to a request for a resource, the RNS server returns a list of locations where the requested resource has been published and is available (FF 3). Additionally, claim 11 only requires the resources include “*one or more of* the peer nodes, peer groups, content, services, applications, pipes, and pipe endpoints” (emphasis added). As noted above with respect to claim 3, the published resources can be services (Teodosiu 2002/0062375 ¶ [0122]). Therefore, the rejection of claim 11 and claims 25, 27, and 28, which include similar limitations, is affirmed.

*Claims 15, 26, and 29-40*

The Examiner’s argument regarding claims 15, 26, 29-36, 38, and 40 is to refer back to the arguments made regarding claims 1-6, 8, 9, and 11 (Ans. 24). However, claims 15, 26, and 29-36, 38, and 40 recite limitations not present in claims 1-6, 8, 9, and 11, and Appellants make persuasive arguments regarding these additional limitations. For instance, as Appellants contend, Teodosiu 2002/0062375 does not teach or suggest: “means for member peer nodes in said peer group to bind to a pipe endpoint,” as recited in claim 15; “a peer group advertisement format configured for use in advertising the peer groups in the peer-to-peer network,” as recited in claim 26; “a peer node broadcasting a peer discovery message” and “the peer node receiving one or more response messages to the peer discovery message from one or more other peer nodes on the peer-to-peer network,” as recited in claim 29. (App. Br. 38, 42, and 44-45)

Further, the Examiner agrees with Appellants' argument regarding claim 37 and makes no argument regarding claim 39, which contains substantially the same limitations as claim 37 (Ans. 24). Therefore, the rejection of claims 15, 26, and 29-40 is reversed.

### DECISION

The Examiner's rejection under obviousness-type double patenting is affirmed with respect to claim 1 and reversed with respect to claims 2-40.

The Examiner's rejection under 35 U.S.C. § 103 of claims 1-4, 8-12, 16-18, 23-25, 27, and 28 is affirmed.

The Examiner's rejection under 35 U.S.C. § 103 of claims 5, 6, 13-15, 21, 26, and 29-40 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2010).

### AFFIRMED-IN-PART

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